

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PESCHKE MAP TECHNOLOGIES LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 12-1526-SLR
	)	
LERNER CORPORATION,	)	
	)	
Defendant.	)	

**DEFENDANT LERNER CORPORATION'S MOTION TO DISMISS  
PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(7)**

Defendant Lerner Corporation ("Lerner") hereby moves the Court to dismiss the Complaint in this action Under Fed. R. Civ. P. 12(b)(1) and 12(b)(7) because the Plaintiff, Peschke Map Technologies LLC ("PMT"), lacks prudential standing to sue in its own name for infringement of U.S. Pat. No. 6,397,143 (the "'143 Patent"). The argument and support for this motion are set forth in Defendant J.J. Gumberg Co.'s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (7) (and Supporting Memorandum) (D. Del., C.A. No. 12-1525-SLR, D.I. 11).

In its complaint against Lerner, PMT makes the identical allegation of standing that it makes against J.J. Gumberg Co. ("Gumberg"), alleging in both cases that PMT is the "exclusive licensee" of the Peschke Patent. (*Compare* D.I. 1, ¶ 2 ("PMT is the exclusive licensee of the Peschke Patent.") *with* C.A. No. 12-1525-SLR, D.I. 1, ¶ 2 ("PMT is the exclusive licensee of the Peschke Patent.")). Nevertheless, in both cases, PMT improperly sues for infringement of the Peschke Patent in its name alone, without joining the owner of the patent. Consequently, Lerner hereby joins and adopts the Gumberg Motion and Supporting Memorandum, and incorporates them herein in their entirety.

This case is one of eighteen (18) cases filed in this Court in which PMT is alleging infringement of the Peschke Patent.<sup>1</sup> The date for responding to the Complaint was extended to February 25, 2012, by stipulated order.

**Certification of Attempt to Confer**

More than a month before filing this motion, on January 21, 2013, lead counsel for Lerner requested that PMT's counsel produce evidence demonstrating PMT's prudential standing to bring this suit. (*See* Exhibit A.) Counsel for Lerner reiterated its request on two subsequent occasions, expressly agreeing each time that D. Del. LR 26.2 would protect the confidentiality of any documents PMT produced. As of the date of this motion, PMT's counsel has refused to substantively respond to Lerner's correspondence, and has refused to produce any documents or evidence to demonstrate its standing to bring this lawsuit.

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<sup>1</sup> The Civil Action Nos. of the related cases are: 12-1573; 12-1571; 12-1570; 12-1574; 12-1572; 12-1520; 12-1524; 12-1527; 12-1528; 12-1529; 12-1530; 12-1531; 12-1525; 12-1521; 12-1522; 12-1532; 12-1523.